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Victor Valley Transit Authority; Transdev Services, Inc.;  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARGARET KEIPER and DAIL  
KEIPER, JR., Individually and as the  
Successors-in-Interest to DAIL KEIPER,  
SR., Deceased

Plaintiffs,

v.

VICTOR VALLEY TRANSIT  
AUTHORITY, a Government entity;  
DINORAH AGUILAR; TRANSDEV  
SERVICES, INC., A Maryland  
Corporation; VEOLIA  
TRANSPORTATION SERVICES,  
INC., A Corporation; STEVEN KILTY;  
FBN TRANSPORTATION, LLC, a  
Wisconsin Limited Liability Company;  
MARDAN TRANSPORTATION LLC,  
a Wisconsin Limited Liability Company;  
AMSTON SUPPLY, INC., a Wisconsin  
Corporation; and DOES 1 through 100,  
inclusive,

Defendants

Case No. 5:15-cv-00703-BRO(SP<sub>x</sub>)

**THIRD-PARTY COMPLAINT**

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VICTOR VALLEY TRANSIT  
 AUTHORITY, a government entity;  
 DINORAH AGUILAR, an individual;  
 TRANSDEV SERVICES, INC., a  
 Maryland corporation; VEOLIA  
 TRANSPORTATION SERVICES,  
 INC., a corporation,

Third-Party Plaintiffs,

v.

THE UNITED STATES OF AMERICA;  
 DOES 1 through 10, inclusive,

Third-Party Defendants.

Pursuant to Rule 14(a) of the Federal Rules of Civil Procedure, Victor Valley Transit Authority ("VVTA"), Transdev Services, Inc. ("TRANSDEV"), Veolia Transportation Services, Inc. ("VEOLIA"), and Dinorah Aguilar ("AGUILAR") (all four parties are collectively referred to as "Third-Party Plaintiffs"), hereby allege as follows:

1. On March 4, 2015, Plaintiffs MARGARET KEIPER and DAIL KEIPER JR., Individually and as the Successors-in-Interest to DAIL KEIPER, SR., Deceased, filed a civil action in the Superior Court of the State of California, County of San Bernardino, against VICTOR VALLEY TRANSIT AUTHORITY, a Governmental entity; DINORAH AGUILAR; TRANSDEV SERVICES, INC., a Maryland Corporation; VEOLIA TRANSPORTATION SERVICES, INC., a Corporation; STEVEN KILTY; FBN TRANSPORTATION, LLC, a Wisconsin Limited Liability Company; MARDAN TRANSPORTATION LLC, a Wisconsin Limited Liability Company; AMSTON SUPPLY, INC., a Wisconsin Corporation; and DOES 1 through 100, inclusive, Case No. CIVDS1502899. A copy of the Complaint is attached hereto as "Exhibit 1."

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1           2.     On April 10, 2015, Third-Party Plaintiffs removed the state court action  
2 from the Superior Court of the State of California, County of San Bernardino, to the  
3 United States District Court, Central District of California, on the basis of federal  
4 enclave jurisdiction.

5           3.     On May 7, 2015, Plaintiffs filed a Motion to Remand the action to state  
6 court.

7           4.     A Response to the Motion for Remand will be filed concurrently with  
8 this Third-Party Complaint.

9           5.     Plaintiffs' claims arise out of an automobile accident on June 2, 2014,  
10 within Fort Irwin, located in San Bernardino County, California, and Plaintiffs seek  
11 certain general, special, and exemplary damages allegedly arising out of said  
12 accident, including claims for costs, fees, and interest.

13           6.     Assuming, without admitting, that Third-Party Plaintiffs, are found to  
14 be responsible for Plaintiffs' alleged damages, The United States of America is liable  
15 to Third-Party Plaintiffs for all or part of the Plaintiffs' claims under state law.

16                   **JURISDICTION AND VENUE**

17           7.     This action is based upon the Federal Tort Claims Act, 28 U.S.C. §  
18 1346(b), 2671 *et seq.*, involving a civil action on claims against the United States,  
19 for money damages, injury, loss of property, personal injury and death, caused by the  
20 negligent or wrongful act or omission of a government employee within the scope of  
21 his or her office or employment, under circumstances where the United States, if a  
22 private person, would be liable to Third-Party Plaintiffs under California law, and  
23 this Court therefore has exclusive jurisdiction over this matter pursuant to the same.

24           8.     The United States District Court for the Central District of California is  
25 the proper venue, as the Plaintiffs reside in the above judicial district, and the act and  
26 omissions herein complained of occurred in said judicial district.

27           9.     The prerequisites under 28 U.S.C.A. § 2675, with regard to claims  
28 directly asserted against the United States of America (i.e., Negligence) have been



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met by Veolia Transportation Services, Inc., as on October 22, 2014, Third-Party Plaintiffs filed a claim for \$750,000,000, with regard to damages to its property, with: 1) Fort Irwin National Training Center, 2) US Army Claims Service; 3) the U.S. Department of Justice; and 4) the Fort Irwin Police. Such claim was denied on March 13, 2015, via a letter signed by Patrick F. McIntyre, Esq., from the Department of the Army, Tort Claims Division. The claim and the denial letter are attached as Exhibits 2 and 3.

10. The prerequisites under 28 U.S.C.A. § 2675 do not apply to claims asserted under the Federal Rules of Civil Procedure by third-party complaint (i.e., for Equitable Indemnity and/or Contribution). See 28 U.S.C.A. § 2675 (a). Nevertheless, utilizing the same claim form with the same timing as indicated in the preceding paragraph, such claims were made by Veolia Transportation Services, Inc., for personal injury in the amount of \$55,000,000, and for wrongful death in the amount of \$20,000,000 (total of \$75,000,000, however the claim form indicates that a sum certain could not be determined at that time), and all such claims were denied in the same letter denying the property damage claim as identified in the preceding paragraph. Indicated in the claim letter was that the claim was for indemnity, defense, contribution, and apportionment for all liability arising from the accident, including as sought by other parties injured or involved in the accident.

### **PARTIES**

11. At all times relevant to this action, Third-Party Plaintiff VVTA was a public entity with its headquarters located at 17150 Smoketree Street, Hesperia, CA 92345. VVTA was operating the transit bus involved in the accident out of which this action arises, as a Common Carrier in the County of San Bernardino, State of California and is presently doing business in the County of San Bernardino, State of California.

12. At all times relevant to this action, Third-Party Plaintiff TRANSDEV was a Maryland Corporation with its headquarters located at 720 E. Butterfield

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1 Road, Suite 300, Lombard, IL. TRANSDEV was, and is, registered with the  
2 California Secretary of State's office and was, and is, doing business in the County  
3 of San Bernardino, State of California.

4 13. At all times relevant to this action, Third-Party Plaintiff VEOLIA was a  
5 Corporation with its headquarters located at 720 E. Butterfield Road, Suite 300,  
6 Lombard, IL. Veolia was, and is, registered with the California Secretary of State's  
7 office and was doing business in the County of San Bernardino, State of California.

8 14. At all times relevant to this action, Third-Party Plaintiff AGUILAR  
9 was a resident of the County of San Bernardino, State of California.

10 15. Third-Party Plaintiffs are informed and believe and, based upon such  
11 information and belief, allege that at all times relevant to this action, Plaintiffs  
12 Margaret Keiper, Dail Keiper, Sr., and Dail Keiper, Jr. resided in or near the City of  
13 Barstow, County of San Bernardino, State of California.

14 16. Third-Party Plaintiffs are informed and believe and, based upon such  
15 information and belief, allege that at all times relevant to this action, Defendant  
16 Steven Kilty ("KILTY") was a resident of the State of Wisconsin. Third-Party  
17 Plaintiffs are informed and believe and, based upon such information and belief,  
18 allege that at all times relevant to this action Defendant KILTY was doing business  
19 in the County of San Bernardino, State of California.

20 17. Third-Party Plaintiffs are informed and believe and, based upon such  
21 information and belief, allege that at all times relevant to this action, Defendant FBN  
22 Transportation, LLC, ("FBN") was, and is, a Wisconsin Limited Liability Company  
23 with its headquarters located at 317 Washington Street, Athens, Wisconsin. Third-  
24 Party Plaintiffs are informed and believe and, based upon such information and  
25 belief, allege that at all times relevant to this action Defendant FBN  
26 TRANSPORTATION was doing business in the County of San Bernardino, State of  
27 California.

28 ///



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1           18. Third-Party Plaintiffs are informed and believe and, based upon such  
2 information and belief, allege that at all times relevant to this action, Defendant  
3 Mardan Transportation, LLC (“MARDAN”) was, and is, a Wisconsin Limited  
4 Liability Company with its headquarters located at 513 Allen Street, Athens,  
5 Wisconsin. Third-Party Plaintiffs are informed and believe and, based upon such  
6 information and belief, allege that at all times relevant to this action Defendant  
7 MARDAN was doing business in the County of San Bernardino, State of California.

8           19. Third-Party Plaintiffs are informed and believe and, based upon such  
9 information and belief, allege that at all times relevant to this action, Defendant  
10 Amston Supply, Inc. (“AMSTON”) was, and is, a Wisconsin Corporation with its  
11 headquarters located at 1521 Waukesha Road, Caledonia, Wisconsin. Third-Party  
12 Plaintiffs are informed and believe and, based upon such information and belief,  
13 allege that at all times relevant to this action Defendant AMSTON was doing  
14 business in the County of San Bernardino, State of California.

15           20. At all times relevant to this action Defendants KILTY, FBN,  
16 MARDAN, and/or AMSTON, were the agents, servants, employees and joint  
17 ventures of each other and all times herein mentioned each and all were actions  
18 within the court, scope, and purpose of their respective agency, service, employment  
19 and joint venture relationship.

20           21. All times relevant to this action, unidentified employees of the UNITED  
21 STATES OF AMERICA, working at Fort Irwin, and with regard to all the  
22 allegations set forth in this Third-Party Complaint (including those referencing  
23 Plaintiffs’ Complaint and Third-Party Plaintiffs’ [Defendants’] Answer to that  
24 Complaint), were acting within the scope of their employment.

25           22. The true names and capacities, whether individual, governmental  
26 agency, corporate, associate or otherwise of the Third-Party Defendants designated  
27 fictitiously herein as Does 1 to 10 are unknown to Third-Party Plaintiffs at this time,  
28 who therefore sue said Third-Party Defendants by said fictitious names and will seek

1 leave of this Court to amend their Third-Party Complaint or will substitute the  
 2 named parties as permitted by law, to show their true names and capacities, when the  
 3 same have been ascertained, together with such additional allegations that may be  
 4 necessary in that regard.

### 5 FACTUAL ALLEGATIONS

6 23. Third-Party Plaintiffs are informed and believe and, based upon such  
 7 information and belief, allege that at approximately 5:10 a.m. on Monday, June 2,  
 8 2014, Dail Keiper, Sr. was on a transit bus, driven by Third-Party Plaintiff  
 9 AGUILAR, traveling in a northbound direction on the Ft. Irwin Truck by-Pass  
 10 Round adjacent to Fort Irwin National Training Center, within Fort Irwin, located in  
 11 San Bernardino County, California.

12 24. Third-Party Plaintiffs are informed and believe and, based upon such  
 13 information and belief, allege that prior thereto, Defendant KILTY, was in the course  
 14 and scope of his agency, service, and employment by Defendant FBN or other  
 15 entities and was operating and/or had parked a TRACTOR-TRAILER  
 16 COMBINATION with the permission and consent of or at the instruction of its  
 17 owners Defendants FBN, MARDEN, and/or AMSTON, and Does 1-10, inclusive,  
 18 and each of them. At said time and place Defendant KILTY brought the  
 19 TRACTOR-TRAILER COMBINATION to a full and complete stop in the darkness,  
 20 in a travel lane on the Fort Irwin Truck By-Pass Road adjacent to Fort Irwin Road  
 21 and Paradise View Road near Painted Rocks just outside the Fort Irwin National  
 22 Training Center but within Fort Irwin, located in San Bernardino County, California.

23 25. At the time of the occurrence hereinafter complained of and at all times  
 24 prior thereto, AGUILAR, and all the Third-Party Plaintiffs were in the exercise of  
 25 ordinary care.

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28 ///



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1           26. Despite the fact that AGUILAR, and all the Third-Party Plaintiffs, were  
2 operating the bus in a reasonable and prudent manner, without speeding, and  
3 exercising due care, the bus AGUILAR was driving, at said time and place, rear-  
4 ended the stopped TRACTOR-TRAILER COMBINATION.

5           27. Said collision was caused in whole or in part by the TRACTOR-  
6 TRAILER COMBINATION being stopped in said travel lane, in the darkness,  
7 without emergency lights or flashers on, without any cones or warning devices, and  
8 without any warning or notice to Third-Party Plaintiffs and AGUILAR about the  
9 dangerous condition it created.

10          28. Plaintiff Decedent Dail Keiper, Sr. suffered fatal injuries.

11          29. Defendants KILTY and FBN, allege in pleadings recently filed with the  
12 Court that the TRACTOR-TRAILER COMBINATION was stopped on Fort Irwin  
13 Bypass Road in compliance with recognized, mandatory, entry procedures into Fort  
14 Irwin. Defendants are thus informed and believe based on these recent  
15 representations by co-defendants that the United States of America and its  
16 employees played a significant role in causing the accident.

17          30. Third-Party Plaintiffs are informed and believe and, based upon such  
18 information and belief, allege that prior to the accident, an unidentified non-party  
19 warned a UNITED STATES OF AMERICA employee working within the confines  
20 of Fort Irwin that the same TRACTOR-TRAILER COMBINATION was stopped in  
21 lanes without lights on Fort Irwin road and that it was “an accident waiting to  
22 happen” and that employee or those employees so notified failed to address the  
23 situation, in violation of the duties of such employee or employees, and such failure  
24 caused in whole or in part the accident at issue.

25          31. Third-Party Plaintiffs further allege that said collision was caused in  
26 whole or in part by the failure of military personnel to require the TRACTOR-  
27 TRAILER COMBINATION to move or to utilize flashers, cones, or warning

28       ///



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1 devices, despite that the TRACTOR-TRAILER COMBINATION was adjacent to a  
 2 manned guard post where military personnel had knowledge of its presence.

3 32. Third-Party Plaintiffs further allege that said collision was caused in  
 4 whole or in part by the policies and procedures in place at Fort Irwin, or failure to  
 5 follow any relevant policies and procedures, where the TRACTOR-TRAILER  
 6 COMBINATION, understood to be a delivery vehicle attempting to enter the base,  
 7 was allowed to park in an active roadway in the darkness without the use of any  
 8 flashers or warning devices, and that such policies and procedures include the failure  
 9 to require such delivery vehicles to utilize warning devices.

10 33. Third-Party Plaintiffs further allege that said collision was caused in  
 11 whole or in part by the failure of military personnel to provide a safe location for  
 12 delivery vehicles to park while awaiting entry into Fort Irwin, requiring them to  
 13 instead park on an active roadway.

14 34. Third-Party Plaintiffs further allege that said collision was caused in  
 15 whole or in part by the decision of employees of the United States of America to  
 16 allow the TRACTOR-TRAILER COMBINATION to be in violation of the Vehicle  
 17 Code and laws of the State of California.

#### 18 **FIRST CAUSE OF ACTION – EQUITABLE INDEMNITY**

19 35. Third-Party Plaintiffs re-allege and incorporate herein by reference as  
 20 though fully set forth herein, the allegations contained in Paragraphs 1 through 34.

21 36. Without admitting any fault, if Third-Party Plaintiffs are held liable to  
 22 Plaintiffs on the Complaints, any such liability will be solely of a secondary and  
 23 passive nature and predicated upon the primary and active liability of Third-Party  
 24 Defendants, and each of them herein, in that Third-Party Defendant's employees so  
 25 negligently and wrongfully developed and mandated entry procedures and allowed a  
 26 TRACTOR-TRAILER COMBINATION to be stopped in lanes without lights or  
 27 warning devices on Fort Irwin Road, in violation of California law, and by failing to  
 28 act despite having notice, which created a dangerous condition and caused the bus

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that Third-Party Plaintiffs AGUILAR was driving, to collide with such TRACTOR-TRAILER COMBINATION.

37. Therefore, Third-Party Defendant is required by law to indemnify and reimburse Third-Party Plaintiffs for the amount of any judgment or settlement in favor of Plaintiffs and for Third-Party Plaintiffs' damages, expenses, costs of suit, legal fees, interest, and other damages incurred, as allowed by law, as a result of their defense of the main action and the necessary prosecution and defense of any related or consolidated actions.

### **SECOND CAUSE OF ACTION - CONTRIBUTION**

38. Third-Party Plaintiffs re-allege and incorporate herein by reference as though fully set forth herein, the allegations contained in Paragraphs 1 through 37.

39. Third-Party Defendants, in violation of applicable traffic law and prudence, caused the TRACTOR-TRAILER COMBINATION to stop and park in the darkness, without having any emergency lights on and without having any cones or warning devices, in or near the number two lane of the Fort Irwin Truck By-Pass adjacent to Fort Irwin Road and Paradise View Road near Painted Rocks just outside the Ft. Irwin National Training Center within Fort Irwin, located in San Bernardino County, California, or failed to cause the TRACTOR-TRAILER COMBINATION to move despite notice and/or participation in its positioning, where it created a danger for vehicles driving in the same direction; and where it caused the Bus being driven by Third-Party Plaintiff AGUILAR to collide with the TRACTOR-TRAILER COMBINATION, although AGUILAR and each Third-Party Plaintiff were in the exercise of ordinary care.

40. By reason of the above facts, and without admitting liability, if Third-Party Plaintiffs are held liable to Plaintiffs on the Complaints, such liability is attributable, in whole or in part, to the acts, omissions, conduct, and status of Third-Party Defendant's employees and Third-Party Defendant in an amount proportionate to the percentage of liability attributable to Third-Party Plaintiffs, and each of them,



1 as determined by the trier of fact, and Third-Party Plaintiffs are therefore entitled to  
2 contribution from each Third-Party Defendant.

3 41. In addition, Third-Party Plaintiffs seek the right to have any damages or  
4 moneys awarded or paid in settlement for noneconomic damages apportioned and  
5 allocated by the Court and/or the trier of fact as against Third-Party Defendants.

### 6 **THIRD CAUSE OF ACTION - NEGLIGENCE**

7 42. Third-Party Plaintiffs re-allege and incorporate herein by reference as  
8 though fully set forth herein, the allegations contained in Paragraphs 1 through 41.

9 43. Third-Party Defendant The United States of America, and its  
10 employees, at all times had a duty to Third-Party Plaintiffs to use reasonable care in  
11 their actions in regard to the public roadway utilized by Third-Party Plaintiff Veolia  
12 Transportation Services, Inc. ("VEOLIA"), in operating public buses in San  
13 Bernardino County, California.

14 44. On June 2, 2014, as a direct result of the acts and/or omissions of Third-  
15 Party Defendant The United States of America, and Does 1-10, and in breach of all  
16 duties owed to Third-Party Plaintiffs, VEOLIA suffered significant property damage  
17 to the bus operated by it on behalf of VVTA.

18 45. VEOLIA and its agents have paid to compensate VVTA for all property  
19 damage, and are thus entitled to seek damages from Third-Party Defendant The  
20 United States of America.

21 46. Federal Tort Claims Act (FTCA) requirements have been complied with  
22 as identified herein.

23 47. As a direct and proximate result of the actions or inaction of Third-Party  
24 Defendant the United States of America, and Does 1-10, Third-Party Plaintiff  
25 VEOLIA has been injured monetarily for the cost of the bus repairs, and it has  
26 additionally incurred attorneys fees, costs, and interest for which it is entitled to be  
27 reimbursed by Third-Party Defendants, and each of them.

28 ///



48. The amount of such damages will be stated according to proof at trial, or as the information is identified in discovery, but at present the damages are believed to be within the amount requested in the FTCA claim for property damage.

### **PRAYER FOR RELIEF**

WHEREFORE, Third-Party Plaintiffs pray for judgment against Third-Party Defendant as follows:

#### **FOR INDEMNITY AND CONTRIBUTION:**

1. For Third-Party Plaintiffs to be fully indemnified by Third-Party Defendants, and each of them, for all liability to Plaintiffs on the Complaint herein, and for all liability as to any cross-claims, third-party claims, consolidated actions, or related actions;

2. For Third-Party Plaintiffs to obtain contribution from Third-Party Defendants, and each of them, for all liability to Plaintiffs on the Complaint herein, and for all liability as to any cross-claims, third-party claims, consolidated actions, or related actions, in an amount proportionate to Third-Party Defendant's proportionate share of total liability;

3. That the Court and/or the trier of fact determines the respective rights and obligations of Third-Party Defendants, and each of them, to Third-Party Plaintiffs, by reason of said controversy and award Third-Party Plaintiffs judgment against Third-Party Defendants, and each of them, authorizing recovery, either fully or partially, for any loss, cost, judgment, interest, attorneys fees, or other expenses suffered by Third-Party Plaintiffs, and that such may include apportionment and/or an allocation of any moneys awarded as to noneconomic damages;

4. Damages according to proof; and,

5. For such other and further relief as the Court deems just and proper.

#### **FOR NEGLIGENCE:**

6. For noneconomic damages for the cost of repairing the bus which was damaged in the accident;

7. For prejudgment interest from the date of the accident, June 2, 2014, to the date of judgment as provided by law, for all such noneconomic damages;
8. For costs of litigation;
9. For attorneys fees incurred; and
10. For such other relief which this Court may deem just and proper.

DATED this 1st day of June, 2015.

  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and that on the 1<sup>st</sup> day of June, 2015, the foregoing **THIRD PARTY COMPLAINT** was served by e-service, in accordance with the Electronic Filing Procedures of the United States District Court.

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